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By overnight mail and e-filing

September 13, 2004

Mary Cottrell, Secretary
Department of Telecommunications and Energy
Commonwealth of Massachusetts
One South Station, 2nd Floor
Boston, MA 02110

Re: D.T.E. 03-60 – Triennial Review Order

Dear Ms. Cottrell:

MCI submits this letter in response to the Department's August 23, 2004 notice in this proceeding relating to a proposed summary of data in the record of this proceeding to be submitted to the FCC in response to the *Interim Order*¹. In that order, the FCC encouraged, but did not require, state commissions to file summaries of their *TRO* proceedings with the FCC, "highlighting factual information that would be relevant under the guidance of *USTA II*." *Interim Order*, ¶ 15.

MCI respectfully encourages the Department to not attempt to create a summary of the incomplete record in this proceeding. As a practical matter, there is not likely sufficient time for the parties and the Department to devise a structure for presenting or summarizing the data, and agree on what data should be included, in time for the filing of the information with the FCC before parties are scheduled to file initial comments with the FCC. The better course of action is to allow the parties to use the record developed in this proceeding prior to suspension of litigation to make whatever factual, legal and policy arguments they deem appropriate in their filings with the FCC.

To facilitate complete access to the record of this proceeding by parties intending to provide Massachusetts data to the FCC, MCI requests that the Department clarify or modify the

¹ Order and Notice of Proposed Rulemaking, *In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, released August 20, 2004 ("Interim Order").

protective order in this proceeding to explicitly sanction use of proprietary information from this proceeding in the FCC proceeding. Specifically, MCI recommends that paragraph 9 of the Protective Order be amended by the addition of the following sentence after the first sentence of that paragraph:

“Persons obtaining access to confidential information under the terms of this Order may also use such information in FCC or judicial proceedings arising from the decision of the U.S. Court of Appeals for the D.C. Circuit in *United States Telecom Assn v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).”

The above proposed language should prevent any disagreement as to whether parties may use non-public data from this proceeding in their FCC comments. Non-public data from the record of this proceeding will be protected from public disclosure by the terms of the protective order issued by the FCC’s Wireline Competition Bureau on August 20, 2004.

Please contact me if you have any questions about this matter.

Sincerely,

Richard C. Fipphen

Cc: Paula Foley, Hearing Officer
Service List (by e-mail)